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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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John A. Gelardi

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EXAMINER

ALIE, GHASSEM

ART UNIT

PAPER NUMBER

3724

NOTIFICATION DATE

DELIVERY MODE

02/19/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketadministrator@mwv.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/560,199	<b>Applicant(s)</b> GELARDI, JOHN A.	
	<b>Examiner</b> GHASSEM ALIE	<b>Art Unit</b> 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12/04/09.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 10,12-15,18,20-22,26-29 and 31-38 is/are pending in the application.
- 4a) Of the above claim(s) 20-22,26-29,33-35 and 38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10,12-15,18,32,36 and 37 is/are rejected.
- 7) ☒ Claim(s) 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

*Election/Restrictions*

1. Newly submitted claims 33-35 and 38 are directed to an invention that is independent or distinct from the invention that has been examined for the following reasons: claim 18 as examined on 08/07/09 and new claims 33-35, 35 and 38 are related as subcombinations disclosed as usable together in a single combination.

- I. Claim 18, drawn to combination including detents on a seal-cutting apparatus and slots in a container.
- II. Claim 33, drawn to a combination including a seal cutting apparatus attached to the container so that the seal-cutting apparatus is not removable from the container. It should be noted that claim 18 recite detents and slots for removably attaching the seal-cutting apparatus to the container.
- III. Claims 34 and 35, drawn to a combination including a seal cutting apparatus having a substantially third surface being disposed substantially higher elevation than the first surface.
- IV. Claim 38, drawn to a seal-cutting apparatus including an opening in the container substantially closed by the first and second surfaces of the seal-cutting apparatus.

Claim 10 link(s) inventions I-III and claim 37 links invention IV. The restriction requirement among the linked inventions is **subject to** the nonallowance of the linking claim(s) 10 and 37. Upon the indication of allowability of the linking claim(s), the restriction requirement as to the linked inventions **shall** be withdrawn and any claim(s) depending from or otherwise requiring all the limitations of the allowable linking claim(s) will be rejoined and fully examined for patentability in accordance with 37 CFR 1.104 **Claims that require**

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**all the limitations of an allowable linking claim** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier.

Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312. Applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, the allowable linking claim, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I-IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, e.g., subcombination I has a separate utility such as it could be used without the above-mentioned feature set forth in inventions II-VI. Conversely, each one of the subcombination II-IV has a separate utility such as it could be used without the above-mentioned feature set forth in invention I. See MPEP § 806.05(d).

It should be noted that the search for each individual invention may overlap but they do not coincide identically throughout. Therefore, the search for the elected invention may not be sufficient for the other non-elected inventions. Therefore, each individual invention includes a different filed of search. In addition, the text and subclass search that might be

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needed to look for a particular feature in one invention is not sufficient for finding another particular feature in other invention due to their divergent subject matter. In other words, each individual invention with at least a distinct feature has a separate status in the art and requires a different field of search.

Since applicant has received an action on the merits for the claims that have been originally examined, accordingly, claims 33-35 and 38 are withdrawn from consideration as being directed to a non-elected invention that has not been originally examined. *See 37 CFR 1.142(b) and MPEP § 821.03.*

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 37 is rejected under 35 U.S.C. 102(b) as being anticipated by Weinstein (5,356,010), hereinafter Weinstein. Regarding claim 37, Weinstein teaches a seal-cutting apparatus including a substantially planar first surface 2 and a planar second surface 6, wherein the first surface is substantially perpendicular to the second surface; a cutting member 10 having at least a portion 12 projecting away from the second surface 6 toward the first surface; an attached container; and at least one blister-pack package 23 received in the container. See Figs. 1-7 in Weinstein.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

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all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 10, 12-15, 32, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grant et al. (3,217,954), hereinafter Grant, or in view of Behrens.

Regarding claims 10 and 37, Grant teaches a combination including a container 10, a blister package 40 received in the container and a seal-cutting apparatus 22, 24, 26, 28. The seal-cutting apparatus includes a receiving channel, the channel being at partially defined by an edge of a first surface. It should be noted that the edge of the panel 32 that faces the channel is considered to be a first surface that includes an edge. Grant also teaches that the seal-cutting apparatus includes a substantially planar second surface 35 which includes the wall that receives the blade 34. Grant also teaches a cutting member 34 located at the second surface 35 and extending toward the first surface. It should be noted that the teeth 34 at least laterally extends toward the first surface. Grant also teaches that the seal-cutting apparatus is held in the container at an opening defined in the container such that the opening entirely closed by the seal-apparatus. See Figs. 1-6 in Grant. Grant does not explicitly teach that the first surface is planar. However, the first surface as defined by edge of the panel 32 could be flat or planar in shape. It would have been obvious to a person of ordinary skill in the art to provide form the first surface of Grant's seal-cutting apparatus, flat or planar, since changing the shape of a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. In addition, In addition, the first surface as defined by edge of the panel 32 could

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be flat or planar, as taught by Behrens. Behrens teaches the edge of the panel or wall 24 at the slot or passage 26 is planar or flat as clearly shown in Fig. 4. It would have been obvious to a person of ordinary skill in the art to provide form the first surface of Grant's seal-cutting apparatus, flat or planar, as taught by Behrens, since both flat surface or curve surface are art-recognized equivalents that produce the same result.

Regarding claim 12, Grant teaches everything noted above including that the first surface is configured to slideably engage at least one blister of the blister package. It should be noted that at least one blister slides against the first surface. See Figs. 4-5 in Grant.

Regarding claim 13, Grant teaches everything noted above including that the second surface is configured to slideably engage at least one blister of the blister package. It should be noted that at least one blister slides against the second surface. See Figs. 4-5 in Grant.

Regarding claim 14, Grant teaches everything noted above including that the receiving channel is configured to allow insertion of at least one edge of the blister package.

Regarding claim 15, Grant teaches everything noted above including that when the blister package is engaged with the first and second surfaces and translated through the receiving channel, at least a portion of the blister package is at least partially the blister the receiving channel is configured to allow insertion of could be at least partially severed by the cutting member 34.

Regarding claim 32, Grant teaches everything noted above including that the opening is dimensioned such that no substantial portion of the seal-cutting apparatus is exposed through the opening except for the receiving channel, the first and second surfaces and the cutting member.

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Regarding claim 36, Grant teaches everything noted above including that the opening is elongated, and the receiving channel is disposed in the opening such that the receiving channel extends along the opening.

7. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grant in view of Castelli (3,002,668). Regarding claim 18, Grant teaches everything noted above except that the seal-cutting apparatus including detents and the container includes slots. However, the use of detent and slot to hold an apparatus in a container is well known in the art such as taught by Castelli. Castelli teaches a cutting apparatus 12 including detent 15 and the container 11 including slots 16. See Figs. 3-5 in Castelli. It would have been obvious to a person of ordinary skill in the art to provide Grant's combination, as modified above, with the detents and slots, as taught by Castelli, in order to firmly hold the apparatus in the container.

8. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grant in view of Behrens, as applied to claim 10, and in further view of Castelli (3,002,668). Regarding claim 18, Grant teaches everything noted above except that the seal-cutting apparatus including detents and the container includes slots. However, the use of detent and slot to hold an apparatus in a container is well known in the art such as taught by Castelli. Castelli teaches a cutting apparatus 12 including detent 15 and the container 11 including slots 16. See Figs. 3-5 in Castelli. It would have been obvious to a person of ordinary skill in the art to provide Grant's combination, as modified by Behrens, with the detents and slots, as taught by Castelli, in order to firmly hold the apparatus in the container.

***Allowable Subject Matte***



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9. Claim 31 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

10. Applicant's arguments with respect to claims 10, 12-15 and 18 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Weinstein et al. (5,431,283) and Bartell et al. (4,905,866) teach a seal-cutting apparatus.

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501.

The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, SEE <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ghassem Alie/  
Primary Examiner, Art Unit 3724

February 11, 2010